

NEW JERSEY POLLUTION CONTROL FINANCING

40:37C-1. Short title

This act shall be known and may be cited as the "New Jersey Pollution Control Financing Law."

P.L.1973, c. 376, § 1, eff. Jan. 9, 1974. Amended by L.1983, c. 298, § 2, eff. Aug. 8, 1983.

40:37C-2. Legislative findings and declaration

The Legislature hereby finds and declares that there is an urgent need to protect and enhance the quality of the natural environment; that to reduce, abate and prevent environmental pollution, quality standards have been and will be established necessitating the employment of devices, equipment and facilities for the collection, reduction, treatment and disposal of gaseous, liquid and solid wastes or other contaminants deriving from the operation of public utility, industrial, manufacturing, warehousing, commercial, office and research facilities, and residential units; that the prompt construction of pollution control facilities, including resource recovery facilities, is in the public interest; that it is desirable to provide additional and alternative methods of financing the costs of the acquisition and installation of the devices, equipment and facilities required to comply with the quality standards which will accelerate the abatement process; and that the alternative method of financing provided in this act is in the public interest and serves a public purpose in encouraging the protection of the health, welfare and safety of the citizens of this State.

P.L. 1973, c. 376, § 2, eff. Jan. 9, 1974. Amended by L.1983, c. 298, § 3, eff. Aug. 8, 1983.

40:37C-3. Definitions

In this act, unless the context otherwise clearly requires, the terms used herein shall have the meanings ascribed to them as follows:

"Act" means this New Jersey Pollution Control Financing Law.

"Authority" means a pollution control financing authority created pursuant to this act.

"Bonds" means any notes, bonds and other evidences of indebtedness or obligations of any agency.

"County" means any county of any class.

"Governing body" means the board of chosen freeholders.

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"Person" means any individual, partnership, firm, company, corporation, public utility, association, trust, estate, or any other legal entity, or their legal representative, agent or assigns.

"Pollution" means any form of environmental pollution deriving from the operation of public utility, industrial, manufacturing, warehousing, commercial, office or research facilities, or deriving from the disposal of solid waste generated at residences, hotels, apartments or any other public or private buildings, including, but not limited to, water pollution, air pollution, pollution caused by solid waste disposal, thermal pollution, " radiation contamination, or noise pollution as determined by the various standards prescribed by this State or the Federal Government and including, but not limited to, anything which is considered as pollution or environmental damage pursuant to the laws, rules and regulations administered by the Department of Environmental Protection as established by P.L.1970, c. 33 (C. 13:1D-1 et seq.), and any amendments and supplements thereto.

"Pollution control facilities" means any structures, facilities, systems, fixtures, lands and rights in lands, improvements, appurtenances, machinery, equipment or any combination thereof designed and utilized for the purpose of resource recovery or for the purpose of reducing, abating or preventing pollution, deriving from the operation of public utility, industrial, manufacturing, warehousing, commercial, office or research facilities; and provided that the State Department of Environmental Protection and the governing body of the county certify that any such facility does not conflict with, overlap or duplicate any other planned or existing pollution control facilities undertaken or planned by another public agency or authority.

"Project costs" as applied to pollution control facilities financed under the provisions of this act means the sum total of all reasonable or necessary costs incident to the acquisition, construction, reconstruction, repair, alteration, improvement and extension of such pollution control facilities including, but not limited to, the cost of studies and surveys; plans, specifications, architectural and engineering services; organization, marketing or other special services; legal financing, acquisition, demolition, construction, equipment and site development of new and rehabilitated buildings; rehabilitation, reconstruction, repair or remodeling of existing buildings, fixtures, machinery and equipment; insurance premiums; and all other necessary and incidental expenses including an initial bond and interest reserve together with interest on bonds issued to finance such pollution control facilities to a date 6 months subsequent to the estimated date of completion and such other reserves as may be required by resolution of an agency.

"Resource recovery" means the collection, separation, recycling and recovery of metals, glass, paper and other materials for reuse or for energy production.

P.L. 1973, c. 376, § 3, eff. Jan. 9, 1974. Amended by L.1983, c. 298, § 4, eff. Aug. 8, 1983.

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40:37C-4. Industrial pollution control financing authority; purposes; by counties; approval; dissolution; filing of resolutions; members; organization

a. Any county may create an authority under the provisions of this act which shall be a public body corporate and politic and a political subdivision of the State for the purpose of acquiring, constructing, reconstructing, repairing, altering, improving, extending, owning, leasing, financing, selling, maintaining, operating and disposing of pollution control facilities within such county; provided that, with respect to any pollution control facility which is not engaged in resource recovery, the Department of Environmental Protection certifies that the proposed undertaking of the authority is the proper method of solving the problem under consideration; and provided further that, with respect to any pollution control facility which is engaged in resource recovery, the facility conforms to the Statewide solid waste management plan and the applicable district solid waste management plan and has an approved registration statement and engineering design pursuant to section 5 of P.L.1970, c. 39 (C. 13:1E-5).

b. The authority shall be created by resolution and shall be known as the " Pollution Control Financing Authority of , " inserting all or any significant part of the name of the county creating the authority. The authority shall constitute an agency and instrumentality of the county creating it.

c. An authority shall consist of five members appointed by resolution of the governing body of the county which created such authority.

Members shall serve for terms of 5 years, provided that the members first appointed shall be designated by the resolution of appointment to serve for terms expiring on the first days of the first, second, third, fourth and fifth Februarys next ensuing after such appointment. Each member shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Any vacancy shall be filled in the same manner as the original appointment but for the unexpired term only.

d. The governing body of any county which has created an authority may dissolve the authority by resolution on condition that the authority has no debts or obligations outstanding or that provision has been made for the retirement of such debts or obligations. Upon any such dissolution, all property, funds and assets of the authority shall be vested in the county which created the authority.

e. A certified copy of each resolution creating or dissolving an authority and each resolution appointing members thereto shall be filed in the office of the Secretary of State. A copy of any such certified resolution, certified by or on behalf of the Secretary of State, shall be conclusive evidence of the due and proper creation or dissolution of the authority or the due and proper appointment of the member or members named therein.

f. The powers of an authority shall be vested in the members thereof from time to time and three members shall constitute a quorum. Action may be taken and motions and

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resolutions adopted by an agency at any meeting thereof by the affirmative vote of at least three members of the authority.

No vacancy in the membership of an authority shall impair the right of a quorum of the members thereof to exercise all the powers and perform all the duties of the authority.

g. At the first meeting of any authority and thereafter on or after February 1 in each year, the members shall elect from among their number a chairman and vice chairman who shall hold office until February 1 next ensuing and until their respective successors have been appointed and qualified. Every authority also may appoint, without regard to the provisions of Title 11 of the Revised Statutes, a secretary, treasurer and such other officers, agents and employees as it may require.

h. The members of an authority shall serve without compensation, but the authority shall reimburse its members for actual expenses necessarily incurred in the discharge of their official duties.

i. No member, officer or employee of an authority, nor member of their family, shall have or acquire any interest, direct or indirect in any pollution control facilities undertaken or planned by the authority or in any contract or proposed contract for materials or services to be furnished to or used by the authority, but neither the holding of any office or employment in the government of any county or municipality or under any law of the State shall be deemed a disqualification for membership in or employment by an authority, except as may be specifically provided by law, and members of the governing body of a county may be appointed by such governing body and may serve as members of the authority. A member may be removed only by the governing body by which he was appointed for inefficiency or neglect of duty or misconduct in office or conviction of a crime, and after he shall have been given a copy of the charges against him and, not sooner than 10 days thereafter, had the opportunity in person or by counsel to be heard thereon by such governing body.

P.L. 1973, c. 376, § 4, eff. Jan. 9, 1974. Amended by L.1983, c. 298, § 5, eff. Aug. 8, 1983.

40:37C-5. Powers

The authority shall have the following powers together with all powers incidental thereto or necessary for the performance thereof:

- a. To have perpetual succession as a public body corporate and politic;
- b. to adopt bylaws for the regulation of its affairs and the conduct of its business;
- c. to sue and to be sued;
- d. to have and to use a corporate seal and to alter the same at pleasure;

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e. to maintain an office at such place or places within the county as it may designate;

f. to acquire after a public notice has been given at least 20 days prior thereto in a newspaper of general circulation in the area served by the authority, in the name of the authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper any land and other property which it may determine is reasonably necessary for any of its pollution control facilities;

g. to determine, with the approval of the State Department of Environmental Protection, the location and manner of construction of pollution control facilities to be financed under the provisions of this act, and to acquire, construct, reconstruct, repair, alter, improve, extend, own, lease, finance, sell, maintain and dispose of the same and to enter into contracts for any and all of such purposes, and to designate persons as its employees and agents to accomplish the same;

h. to lease to a person or persons any or all of the pollution control facilities upon such terms, conditions and guarantees as the authority shall deem proper, and to charge and collect rent and fees therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, provisions that the lessee or lessees thereof, and any guarantor of such lease, shall have upon the termination of the lease term options to renew the term of the lease for such period or periods and at such rent as shall be determined by the authority or to purchase any or all of the pollution control facilities for a nominal amount or otherwise or that upon payment of all of the indebtedness incurred by the authority for the financing of such pollution control facilities of the authority may convey any or all of the pollution control facilities to the lessee or lessees thereof;

i. to sell to a person or persons any or all of the pollution control facilities upon such terms and conditions as the authority shall deem proper including the right to receive for such sale the note or notes of the person or persons purchasing the facility;

j. to acquire, hold, pledge, mortgage and dispose of real and personal property in the exercise of its powers and performance of its duties under this act;

k. to invest and reinvest bond proceeds pending application to the purposes for which such bonds were issued and other funds under its control, subject only to the provisions of any bond resolution, lease or other agreement entered into by such authority;

l. to issue bonds in such principal amounts as, in the opinion of such authority, shall be necessary to provide sufficient funds to carry out the purpose of this act, including the planning, financing, acquisition, construction and other project costs of pollution control facilities, the payment of interest on the bonds of the authority, the provision for working capital and all other expenditures of the agency incident to and

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necessary or convenient for carrying out its purposes and powers and to refund the same, all as provided for in this act;

m. to employ engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents, without regard to the provisions of Title 11 of the Revised Statutes, as may be necessary in its judgment and to fix their compensation;

n. to receive and accept from any public agency loans or grants for or in aid of the construction of pollution control facilities and any portion thereof, or for equipping the same, and to receive and accept grants, gifts or other contributions from any source;

o. to refund, after public notice has been given, outstanding obligations incurred by any agency or any person to finance the cost of pollution control facilities, including obligations incurred for pollution control facilities undertaken and completed after the enactment of this act when the authority finds that such financing is in the public interest;

p. to extend credit or make loans to any person in order to pay or provide for the payment of any project costs of a pollution control facility; and

q. to do all things necessary and convenient to carry out the purposes of this act.

P.L. 1973, c. 376, § 5, eff. Jan. 9, 1974. Amended by L.1983, c. 298, § 6, eff. Aug. 8, 1983.

40:37C-6. Sale or lease of facilities; minimum amount of payments or rentals

Any sale or lease of pollution control facilities entered into pursuant to the provisions of this act shall provide for payments or rentals adequate to pay the principal of and interest and premiums, if any, on bonds issued to finance such facilities as the same fall due and to create and maintain such reserves and accounts for depreciation, if any, as the authority shall determine to be necessary.

P.L. 1973, c. 376, § 6, eff. Jan. 9, 1974.

40:37C-7. Inapplicability of chapters 32 to 36 of Title 52

No authority shall be subject to the provisions of chapters 32 to 36, inclusive, of Title 52 of the Revised Statutes in the exercise of any of its powers under this act.

P.L. 1973, c. 376, § 7, eff. Jan. 9, 1974. Amended by L.1975, c. 96, § 16, eff. May 16, 1975.

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40:37C-8. Bonds; issuance; redemption; terms; sale; refunding bonds

All bonds issued by an authority may be issued as serial bonds or as term bonds or a combination of both types. Such bonds shall be payable solely out of the revenues and receipts derived from the leasing or sale by the authority of the pollution control facilities acquired with the proceeds thereof as may be designated in the proceedings under which the bonds shall be authorized to be issued or from the loan and security agreements or other instruments entered into between an authority and the person to whom the proceeds of the bonds have been loaned for the purpose of paying any of the project costs of a pollution control facility. Such bonds may be executed and delivered by the authority at any time and from time to time, bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, be executed by the manual or facsimile signatures of such officers of the authority and contain such provisions not inconsistent herewith, all as shall be provided in the proceedings of the authority. If deemed advisable by the authority, there may be retained in the proceedings under which any bonds are authorized to be issued a right or option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings, but nothing herein contained shall be construed to confer on any authority the right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued. Any bonds may be sold at public or private sale for such price or prices and in such manner and at such time or times as may be determined by the authority and the authority may pay all expenses, premiums and commissions which it may deem necessary or advantageous in connection with the issuance thereof. Issuance by the authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same pollution control facilities or any other pollution control facilities or for any other purpose hereunder, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge made for any prior issue of bonds. Any bonds at any time outstanding may at any time and from time to time be refunded by the issuance of refunding bonds in such amount as the authority may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any premiums, commissions, service fees and other expenses necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby with the consent of all or so many of the holders of the bonds so to be refunded as may be determined and regardless of whether or not the bonds to be refunded were issued in connection with the same pollution control facilities or separate pollution control facilities or for any other purpose hereunder, and regardless of whether or not the bonds proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise. All such bonds and the interest coupons applicable thereto, if any, are hereby made and shall be

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construed to be negotiable instruments within the meaning, and for all purposes, of Title 12A, Commercial Transactions, of the New Jersey Statutes (N.J.S. 12A:1-101 et seq.) with the exception of any provisions thereof pertaining to registration.

P.L. 1973, c. 376, § 8, eff. Jan. 9, 1974. Amended by L.1983, c. 298, § 7, eff. Aug. 8, 1983.

40:37C-9. Security for principal, interest and premiums

The principal of and interest and premiums, if any, on any bonds issued by an authority shall be secured by a mortgage or pledge of the revenues and receipts out of which the same shall be made payable and may be secured by the pledge of all or any part of the assets of such authority, subject to such agreements with bondholders as may then prevail, or such bonds of the authority may be secured by loan and security agreements or any other instrument upon terms and conditions as the authority shall deem reasonable, including provision for the establishment and maintenance of reserve and insurance funds; provided that any such agreement or instrument shall provide for payments at least adequate to pay the principal of and interest and premiums, if any, on bonds issued to finance pollution control facilities as they become due and payable. The resolution under which the bonds are authorized to be issued may contain any agreements and provisions respecting the maintenance of the properties covered thereby; the fixing, collection and use of rents for any portions thereof leased by the authority to others; the determination, collection and application of payments to be received for the sale of any properties covered thereby; the creation and maintenance of special funds from such revenues or receipts and the limitations on the purpose to which the proceeds from the sale of the bonds may be applied and pledging such proceeds to secure the payment of the bonds; the limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds; the procedure, if any, by which the terms of any such agreement may be amended or abrogated; and the rights and remedies available in the event of default, including the designation of a trustee, all as the authority shall deem advisable and not in conflict with the provisions hereof. Each pledge and agreement made for the benefit or security of any of the bonds of the authority shall continue effective until the principal of and interest and premiums, if any, on the bonds for the benefit of which the same were made shall have been fully paid or provision for such payment duly made. In the event of default in such payment or in any agreement of the authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any indenture executed as security therefor, said payment or agreement may be enforced by suit, action in lieu of prerogative writ, or the appointment of a receiver in equity, or any one or more of said remedies.

As further security for the bonds, an authority may enter into contracts of insurance assuring that the principal of and interest on such bonds will be paid and that rental payments, installment payments or other payments to be made by the user of the facilities will be made; provided, however, that the authority shall not be obligated under the terms of such policy to any greater extent than allowed by the provisions of this act. The cost of any such insurance contract may be paid out of the proceeds of the sale of the bonds so insured.

P.L. 1973, c. 376, § 9, eff. Jan. 9, 1974. Amended by L.1983, c. 298, § 8, eff. Aug. 8, 1983.

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40:37C-10. Nonliability of state, political subdivision thereof, county or municipality; guarantee of rights and remedies of bondholders

Bonds issued under the provisions of this act shall not be deemed to constitute a debt or liability of the State or of any political subdivision thereof, but shall be payable solely from the funds herein provided therefor. The issuance of bonds under the provisions of this act shall not, directly, indirectly or contingently, obligate the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. Nothing in this act shall be construed to authorize an agency to create a debt of the State or any county or municipality within the meaning of the Constitution or statutes of New Jersey and all bonds issued by such authority pursuant to the provisions of this act, unless funded or refunded pursuant to this act, are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any indenture executed as security therefor. The State, county, and municipality shall not in any event be liable for the payment of the principal of or interest or premiums, if any, on any bonds of an authority or for the performance of any pledge, obligation or agreement of any kind whatsoever which may be undertaken by such authority. No breach by an authority of any such pledge, obligation or agreement may impose any pecuniary liability upon the State, county or municipality or any charge upon their general credit or against their taxing power.

The State, however, does pledge and agree with the holders of any bonds issued under this act that it will not limit or alter the rights hereby vested in any authority to fulfill the terms of any agreements made with the holders thereof consistent herewith, or in any way impair the rights and remedies of such holders until such bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses for which the authority is liable in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. Any authority is authorized to include this pledge and agreement of the State in any agreement it may make with the holders of such bonds.

P.L. 1973, c. 376, § 10, eff. Jan. 9, 1974.

40:37C-11. Certification of facilities; condition precedent to adoption of resolution for authorization for bonds

Before any authority adopts a resolution authorizing the issuance of bonds and as a condition precedent to any such authority to issue bonds, the Commissioner of Environmental Protection must first have certified that the facilities to be financed are or, when constructed, will be pollution control facilities as defined in this act.

P.L. 1973, c. 376, § 1, eff. Jan. 9, 1974.

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40:37C-12. Tax exemptions

All bonds issued pursuant to the act are hereby declared to be issued for an essential public and governmental purpose and such bonds, and the interest thereon and the income therefrom, and all funds, revenues, income and other moneys received or to be received by the issuing authority and pledged or available to pay or secure the payment of such bonds, or interest thereon, shall at all times be exempt from taxation except for transfer, inheritance and estate taxes.

P.L. 1973, c. 376, § 12, eff. Jan. 9, 1974.

40:37C-13. Disposition of facilities after payment and retirement of bonds

When the principal of and interest on bonds issued by an authority to finance the cost of a particular pollution control facility, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution and the indenture authorizing and securing the same have been satisfied, such authority may do all things and execute such deeds and conveyances as are necessary and required to convey its right, title and interest in such pollution control facilities for a nominal amount or otherwise.

P.L. 1973, c. 376, § 13, eff. Jan. 9, 1974.

40:37C-14. Independence of authority

Except as herein provided, no proceedings, referendum, notice or approval shall be required for the creation of an authority or the issuance of any bonds or any instrument as security therefor, provided however, that nothing herein shall be construed to deprive the State and its governmental subdivisions of their respective police powers over properties of an authority, or to impair any power thereover of any official or agency of the State and its governmental subdivisions which may be otherwise provided by law.

P.L. 1973, c. 376, § 14, eff. Jan. 9, 1974.

40:37C-15. Legal investments; security for public deposits

The State and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance businesses and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking fund, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by any authority created pursuant to this

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act, and such bonds or other obligations shall be authorized security for any and all public deposits.

P.L. 1973, c. 376, § 15, eff. Jan. 9, 1974.

40:37C-16. Powers conferred by act as additional and supplementary

The powers conferred by this act shall be in addition and supplementary to those in other laws and the limitations by this act shall not affect the powers conferred by any other law.

P.L. 1973, c. 376, § 16, eff. Jan. 9, 1974.

40:37C-17. Severability

The provisions of this act shall be severable, and if any of the provisions hereunder shall be held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of any of the remaining provisions of this act.

P.L. 1973, c. 376, § 17, eff. Jan. 9, 1974.

40:37C-18. Annual audit of accounts; filing

It shall be the duty of every authority created pursuant to this act to cause an annual audit of the accounts of the authority to be made and filed with the authority, and for this purpose the authority shall employ a registered municipal accountant of New Jersey or a certified public accountant of New Jersey. The audit shall be completed and filed with the authority within 4 months after the close of the fiscal year of the authority and a certified duplicate copy thereof shall be filed with the Director of the Division of Local Government Services in the Department of Community Affairs within 5 days after the original report is filed with the authority. Every authority created pursuant to this act shall file a certified copy of every bond resolution with the Director of the Division of Local Government Services in the Department of Community Affairs and in addition shall file a certified copy of all bond proceedings with the director.

P.L. 1973, c. 376, § 18, eff. Jan. 9, 1974.